

IN THE CIRCUIT COURT OF PULASKI COUNTY
CIVIL DIVISION

REPRESENTATIVE/SENATOR
DAN SULLIVAN, IN HIS OFFICIAL
CAPACITY, et al.

PETITIONERS

v.

CASE NO. 60CV-20-4915

JOSE ROMERO, M.D., SECRETARY
OF THE DEPARTMENT OF
HEALTH, IN HIS OFFICIAL
CAPACITY, ET AL.

RESPONDENTS

OPINION AND JUDGMENT

Petitioners, members of the General Assembly and private persons, bring suit challenging the validity of directives issued by the Secretary of the Arkansas Department of Health ("Secretary") pursuant to Executive Orders of the Governor relating to the COVID-19 pandemic. The Petitioners have sued the Secretary and have amended their Petition to sue Governor Asa Hutchinson as well. This Court held a hearing on the Respondents' Motion to Dismiss on October 14, 2020.

The original petition was filed on September 3, 2020. The Secretary moved to dismiss the original petition on September 22, 2020. The Petitioners responded and the Secretary replied. On October 12, 2020, the Petitioners filed an amended petition naming Governor Hutchinson as a Respondent. At the hearing on the motion to dismiss, the Court asked the parties their position on the amended petition and the

pending motion to dismiss. The Court understands the parties have no objection to the Court considering the motion to dismiss as against the amended petition and the Court will, therefore, do so.

The Respondents raised the argument in their motion to dismiss that the Governor was an interested party that had not been joined in the action. Because the Petitioners amended the petition to include the Governor as a Respondent, the Court finds the Respondent's argument moot.

The Petitioners claim that the directives issued by the Secretary are really rules that must go through the rule-making process found in the Arkansas Administrative Procedures Act. Ark. Code Ann. § 25-15-201 et seq. They claim that the directives, therefore, constitute the usurpation of legislative power by the executive branch of government. The parties agree that the Administrative Procedures Act does not apply to the Governor and his actions.

One issue in this case is whether the Emergency Services Act vested the Governor with the power and authority to direct the Secretary to issue the directives which are challenged in this case. Ark. Code Ann. § 12-75-101—133. The Court further notes that Arkansas Code Annotated § 20-7-109 requires the Board of Health to make all necessary and reasonable rules for the protection of the public health and safety. Furthermore, Arkansas Code Annotated § 20-7-110(a)(2) provides:

The board shall make a study of the causes and prevention of infectious, contagious, and communicable diseases, and, except as otherwise provided in this act, the board shall have direction and control of all matters of quarantine rules and enforcement. The board shall have full power and authority to prevent the entrance of such diseases from points outside the state

The Court finds that, in the statutes just mentioned, the Legislature has given statutory authority for the Secretary and the Board of Health to issue rules to protect the public from threats such as COVID-19. And, the Court finds that the State Board of Health's 2019 Rules and Regulations Pertaining to Reportable Diseases, which are attached to the Petition, gave the Secretary the authority to issue the directives at issue in this case. Those rules specifically cover "Novel Coronavirus." Novel means "new." Petitioners' argue that COVID-19 does not fall within the category of "Novel Coronavirus" in those Rules. The Court disagrees and finds the General Assembly, which lawfully authorized the 2019 Rules, gave authority for the Secretary to issue the directives at issue in this case because they relate to Novel Coronavirus.

The Court further finds that the Emergency Services Act gave the Governor authority to issue the Executive Orders at issue in this case. Specifically, Executive Order 20-03, issued March 11, 2020, and the successive Executive Orders issued by the Governor, were made pursuant to the proper delegation of authority by the General Assembly. And, the Emergency Services Act does not limit the Governor to tell the Secretary to issue the directives at issue in this case.

A declaratory judgment serves "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." Ark. Code Ann. ¶ 16-11-112. Here, the Court finds there is no uncertainty because the law is clear. Therefore, a declaratory judgment is not appropriately issued in this case.

The Court grants the Respondents' motion to dismiss. The Emergency Services Act granted the Governor power to tell the Secretary to take the actions he has taken

regarding COVID-19. The Court also finds the 2019 Rules authorized the Secretary to manage the pandemic and that those rules satisfy the rule-making requirements of the Administrative Procedures Act. Finally, the Court finds that there is no time limitation on the Governor's authority to issue Executive Orders relating to a public health emergency such as COVID-19. Motion granted.

It is so ORDERED this the 23rd day of October, 2020.



WENDELL GRIFFEN
CIRCUIT COURT JUDGE

Order Prepared By:

Michael Mosley
MICHAEL MOSLEY (2002099)
Assistant Attorney General
OFFICE OF THE ARKANSAS
ATTORNEY GENERAL
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-2081
Fax: (501) 682-2591
Email: michael.mosley@arkansasag.gov

Attorneys for Respondent